

REMARKS

1. Introduction

In the Office Action mailed July 13, 2005, the Examiner rejected claims 1-2, 6, 8-10, 14, 16-20 and 24 under 35 U.S.C. § 102 as being anticipated by Spinar et al., U.S. Pub. No. 2002/0080816 ("Spinar"). In addition, the Examiner rejected claims 3-5, 11-13, and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over Spinar and rejected claims 7 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Spinar in view of Nee et al., U.S. Patent No. 6,876,857 ("Nee").

For the reasons set forth below, Applicants respectfully request reconsideration and allowance of the application.

2. Response to Rejections

The Examiner has rejected all of the independent claims, i.e., claims 1, 9, 16, and 20, under § 102 as being anticipated by Spinar. In response, Applicants submit that these rejections are improper and should be withdrawn because Spinar does not disclose each and every element of these claims, as set forth below.

Each of these claims refers to a threshold number of "mobile stations." Claims 1 and 9 each recite "determining that a threshold number of *mobile stations* being provided communication services are concurrently operating in the given coverage area." Claim 16 recites "determining that a number of *mobile stations* concurrently being provided communication services by the wireless network is below a predetermined threshold." Claim 20 recites "program logic ... to determine that a threshold number of *mobile stations* are operating concurrently in the given coverage area." The Examiner's rejections of these claims under § 102 are premised on

the Examiner's position that the Customer Premises Equipment (CPE) stations 110 in Spinar (and their associated users and subscribers) are inherently mobile stations. However, the Examiner has failed to meet his burden of providing a rationale or evidence tending to show that the CPEs in Spinar are inherently mobile stations:

In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

MPEP § 2112(IV) (emphasis original). In this case, the Examiner has not provided any basis in fact nor any technical reasoning to support the Examiner's position that the CPEs in Spinar are necessarily mobile stations.

Indeed, Spinar makes clear the CPEs are not mobile stations because the CPEs are in *fixed* locations:

The broadband wireless system facilitates two-way communication between a base station and a plurality of *fixed* subscriber stations or Customer Premises Equipment (CPE) stations.

(paragraph 5); and:

Each cell 102 provides wireless connectivity between the cell's base station 106 and a plurality of customer premises equipment (CPE) 110 positioned at *fixed* customer sites 112 throughout the coverage area of cell 102.

(paragraph 8). Thus, there is no basis for the Examiner's position that the CPEs (and their associated users and subscribers) are mobile stations.

Accordingly, Applicants submit that claims 1, 9, 16, and 20 are allowable over Spinar for at least the foregoing reasons. Applicants further submit that claims 2-8, 10-15, 17-19, and 21-24 are allowable for at least the reason that they are dependent on allowable claims.



Conclusion

Applicants submit that the present application is in condition for allowance, and notice to that effect is hereby requested. Should the Examiner feel that further dialog would advance the subject application to issuance, the Examiner is invited to telephone the undersigned at any time at (312) 913-0001.

Respectfully submitted,

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